

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
1998 Biennial Regulatory Review --)	
Reform of the International Settlements)	IB Docket No. 98-148
Policy and Associated Filing Requirements)	
)	CC Docket No. 90-337
Regulation of International)	
Accounting Rates)	

REPLY COMMENTS OF PRIMETEC INTERNATIONAL, INC.

Randall B. Lowe
James J. Halpert

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900

Attorneys for PrimeTEC, International, Inc.

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REPLY COMMENTS OF PRIMETEC INTERNATIONAL, INC.

I. INTRODUCTION AND SUMMARY

PrimeTEC International, Inc. ("PrimeTEC"), by its attorneys, replies to the comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹ PrimeTEC is a competitive provider of international facilities-based and resale telecommunications service.

PrimeTEC strongly supports the NPRM's twin purposes of eliminating unnecessary regulation and promoting "lower consumer rates and service innovation." Id. at ¶ 2. To achieve these ends consistent with the statutory purpose of Section 161, the Commission should shed unnecessary regulation while preserving regulations that create conditions for vigorous competition among new entrants and incumbents alike that will drive inflated rates to cost-based levels.

¹ In the Matter of 1998 Biennial Regulatory Review -- Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates,

(footnote continued to next page)

PrimeTEC is pleased that most comments addressing the following issues support PrimeTEC's position that the Commission should: (1) cease applying the ISP to arrangements with non-dominant carriers from WTO countries; (2) retain the Flexibility Order safeguard for arrangements affecting 25% or more of the inbound or outbound traffic on a route (hereafter "the first Flexibility Order safeguard")² because of the potential for anti-competitive conduct in such arrangements, and eliminate special reporting requirements for arrangements with non-dominant foreign affiliates that do not reach the 25% threshold; and (3) retain the No Special Concessions Rule with respect to interconnection, private line provisioning and maintenance, and quality of service where the ISP no longer applies.

PrimeTEC agrees with CompTel that even if the ISP no longer applies, the first Flexibility Order safeguard should be retained for all arrangements that meet the threshold traffic volume criterion for the safeguard. It further agrees with AT&T, MCI and others that the Commission should not allow groomed traffic between dominant foreign carriers and incumbent LECs (ILECs) with dominant market share.

Parties offer a wide array of suggestions regarding lifting the ISP for arrangements with dominant carriers from WTO countries. PrimeTEC believes that the Commission should require low settlement rates and equivalent resale opportunities before lifting the ISP for arrangements

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Notice of Proposed Rulemaking, IB Dkt. No. 98-148, CC Dkt. No. 90-337 (rel. Aug. 6, 1998) (hereafter "the NPRM").

² This safeguard requires public filing of such arrangements and prohibits unreasonably discriminatory terms and conditions in such arrangements. See NPRM at ¶ 13 n.21; Flexibility Order, 11 FCC Rcd. at 20,081-82.

with dominant carriers on ISR routes. It also believes that the Commission should judiciously expand use to ISR to increase pressure on settlement rates on other routes. The most pro-competitive solution would be to allow carriers with a small market share (e.g., 5% of the traffic on the route) to carry a limited amount of traffic through ISR, while certifying net inbound and outbound traffic flows, so that the Commission may ensure against anti-competitive conduct.

II. THE ISP SHOULD BE LIFTED FOR ARRANGEMENTS WITH NON-DOMINANT CARRIERS FROM WTO COUNTRIES, SUBJECT TO APPROPRIATE SAFEGUARDS.

All parties addressing the issue agree with the NPRM's tentative conclusion (at ¶ 20) to cease applying the ISP to arrangements with non-dominant carriers from WTO countries because there is a minimal risk that such carriers could engage in anti-competitive behavior.

However, relaxing the ISP need not and should not entail eliminating pro-competitive safeguards altogether for such arrangements. See Comments of Ameritech at 3-4; Comments of CompTel at 10. Such protections are essential if vigorous price competition is to develop on international routes, driving prices down to cost.

As PrimeTEC demonstrated in its opening Comments, the purpose of the first Flexibility Order safeguard is to prevent anti-competitive conduct by U.S. or foreign carriers with significant market share.³ As it eliminates other safeguards in an effort to encourage competition, the Commission should retain this check against anti-competitive conduct in

³ Comments of PrimeTEC at 5; see also Comments of Ameritech at 3.

arrangements that have the potential to produce significant disruptions for other U.S. and foreign carriers. See also Comments of Ameritech at 3-4.

These arrangements involving very large amounts of traffic on a route should be publicly filed, and must not contain unreasonably discriminatory terms and conditions. See Flexibility Order, 11 FCC Rcd. 20,078-84 ¶¶ 36-51. Public filing is necessary to permit other carriers to bring discriminatory arrangements to the attention of the Commission.⁴

Sprint suggests that the Commission lift the ISP completely for arrangements with non-dominant carriers from non-WTO countries affecting 25% or less of the traffic on a route. See Comments of Sprint at 3-4. In PrimeTEC's view, this proposal is premature because there is no recourse to ensure that such countries follow any of the basic competitive principles embodied in the WTO Basic Telecomms Agreement. In such circumstances, it would be inadvisable to "essentially eliminate regulatory oversight" for these arrangements. See NPRM at ¶ 24.⁵

III. INSTEAD OF LIFTING THE ISP ENTIRELY ON ISR ROUTES, THE COMMISSION SHOULD CONTINUE TO RELY UPON ISR AND FLEXIBLE ARRANGEMENTS.

Because of the greater risk of anti-competitive conduct by dominant carriers, the Commission should proceed cautiously in lifting the application of the ISP to arrangements with dominant carriers on ISR routes. Instead, it should rely upon ISR, switched hubbing, and

⁴ AT&T complains of delay in "the accounting rate modification or public notification procedures" as justification for eliminating the reporting requirement. Comments of AT&T at 19. This concern is far more appropriately addressed by speeding up the rate approval process than by eliminating public scrutiny.

Internet telephony to bring continued pressure to bear in promoting competition with dominant carriers on ISR routes before moving to lift the ISP entirely for arrangements with dominant carriers.

As AT&T demonstrates, the fact that 50% of the traffic to a country is settled at benchmark rates -- which are not cost-based, and far exceed costs in many parts of the world -- is insufficient reason to suspend the ISP. See Comments of AT&T at 8-9. Many countries that signed the WTO Agreement are not yet subject to its provisions. Moreover, even in countries that are already bound by the Agreement, the record of compliance with WTO principles to date is hardly unmixed, notwithstanding rhetoric about "full liberalization" in the comments of several dominant foreign carriers.⁶ Furthermore, CompTel's suggestion that the Commission be guided by whether there are two facilities-based competitors in a country, see Comments of CompTel at 4-5, does not adequately account for whether the second carrier has sufficient coverage to offer a meaningful alternative for originating and receiving traffic on the route.

Accordingly, PrimeTEC asks the Commission to require that the foreign market allow origination of ISR and meet benchmark rates before lifting the ISP entirely for traffic to that

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⁵ See also, e.g., Comments of AT&T at 3 n.2.

⁶ See, e.g., Comments of Deutsche Telekom at 2, which touts "full liberalization . . . in most European member states" in this proceeding, while insisting before German regulators that foreign carriers invest in 23 interconnection points in Germany alone in order to obtain regulated interconnection rates.

country. In the alternative, the Commission should retain Flexibility Order safeguards with respect to all arrangements with dominant carriers, even where it lifts the ISP.⁷

In addition, as both PrimeTEC and TRA suggest, the Commission should allow ISR on additional routes by carriers transporting less than 5% of the traffic on the route.⁸ Such a rule would "put significant pressure on settlement rates, while limiting potential damage from one-way bypass." NPRM at ¶ 38. Effects on settlement flows would be minimal, and the Commission could monitor them through limited reporting requirements regarding the percentages of inbound and outbound traffic transmitted through such arrangements.

IV. THE COMMISSION SHOULD RETAIN THE FIRST FLEXIBILITY ORDER SAFEGUARD AND MODIFY THE SECOND SAFEGUARD.

A. The Safeguard Concerning Arrangements Affecting 25% or More of Inbound or Outbound Traffic on a Route Should Be Retained.

The Comments demonstrate broad agreement with the Commission's tentative conclusion (at ¶ 34) to retain the first Flexibility Order safeguard for arrangements affecting 25% or more of the inbound or outbound traffic on a route.⁹

⁷ See also Comments of MCI Worldcom at 12 (recommending that safeguards apply "when the ISP is removed or waived").

⁸ Comments of PrimeTEC at 9-10; Comments of TRA at 7-8; cf. Comments of Sprint at 11 (recommending that the Commission devote its enforcement energies to ISR arrangements that "cover a substantial amount of traffic" and pose "the greatest potential harm to competition in the U.S. market").

⁹ See, e.g., Comments of Ameritech at 5; Comments of Sprint at 9; Comments of RSL at 3; Comments of BellSouth at 4; Comments of Telecommunications Resellers Association (TRA) at 7; Comments of Level 3 at 5-6.

The only domestic carrier specifically objecting to preservation of the safeguard is AT&T, which revives two arguments that it raised on reconsideration in the Flexibility Order proceeding: first, that the 25% threshold for outbound traffic is arbitrary; second, that smaller U.S. carriers may use flexible arrangements involving smaller amounts of traffic to under-price larger carriers subject to the rule; and third, that maintaining the safeguard while liberalizing other reporting requirements would unfairly target AT&T. See Comments of AT&T at 25-27, 16-18.

The 25% threshold is an entirely reasonable exercise of the Commission's discretion based upon the record presented in the Flexibility Order proceeding concerning the risk of anti-competitive activity by larger carriers.¹⁰

Second, the notion that the first Flexibility Order safeguard gives smaller carriers an unfair competitive advantage vis-à-vis carriers handling 25% or more of outbound traffic on a route is far-fetched. In PrimeTEC's experience, foreign correspondents typically charge smaller carriers considerably more than very large carriers based upon volume-sensitive pricing arrangements.¹¹ Furthermore, large foreign correspondents are more accustomed to dealing with larger U.S. carriers. On occasion, they are even reluctant to deal at all with smaller, lesser-known carriers, raising baseless quality of service and other similar objections. Far from giving smaller carriers an unfair advantage, the first Flexibility Order safeguard provides an important

¹⁰ See, e.g., Comments of NYNEX, CC Dkt. No. 90-337, Phase II, at 7-8:

¹¹ Indeed, as Telia observes, very large carriers are in fact much larger than some foreign dominant carriers. Comments of Telia at 7. Their outbound traffic volumes make their business very attractive to correspondents.

check against discriminatory arrangements among large carriers that can seriously disrupt smaller carriers' business plans.

Finally, retaining the safeguard does not unfairly target AT&T. Competing U.S. carriers such as Sprint will also be affected.¹² Moreover, dominant foreign carriers providing international service in the United States pursuant to Section 214 authority will routinely exceed the 25% traffic threshold on routes to their home countries.

B. The Safeguard Concerning Arrangements with Foreign Affiliates Should Be Modified.

Almost every party addressing the issue agrees that the Commission should eliminate special reporting requirements for a U.S. carrier's arrangements with a non-dominant foreign affiliate that taken as a whole do not rise to the level of the 25% traffic threshold on a particular route.¹³ This reform of Commission policy is necessary because to avail themselves of protections under the E.C. Competition directives, for example, competitive U.S. carriers are obliged to incorporate abroad and to interconnect with their foreign affiliates. As the NPRM notes (at ¶ 34), this reform poses little or no danger of anti-competitive conduct for the same reasons supporting the Commission's intention to relax the ISP for arrangements with other non-dominant carriers.

¹² See, e.g., Opposition of Sprint, at 4, CC Dkt. No. 90-337, Phase II.

¹³ See, e.g., Comments of AT&T at 28; Comments of MCI Worldcom at 8 & n.12; Comments of BellSouth at 4-5; Comments of Sprint at 9; Comments of SBC at 13-14; Comments of Telegroup at 2-4.

Conversely, arrangements between a U.S. carrier and a foreign affiliate or non-equity joint venture partner that is dominant in the relevant market should be publicly filed and should not contain any unreasonably discriminatory terms and conditions.¹⁴ This safeguard is necessary because the risk of anti-competitive behavior is greatest when a dominant foreign carrier may exploit its market power position on a route to discriminate in favor of its U.S. affiliate or joint venture partner.

Finally, as noted above, the risk of anti-competitive behavior in the cases of arrangements affecting 25% or more of traffic on a route and of arrangements with dominant foreign affiliates or joint venture partners is significant enough that these safeguards should apply regardless of whether the ISP itself applies.

V. THE NO SPECIAL CONCESSIONS RULE SHOULD BE RETAINED TO THE GREATEST EXTENT PRACTICABLE.

PrimeTEC and other commenters¹⁵ strongly endorse the Commission's tentative conclusion (at ¶ 41) that even where the ISP no longer applies, the No Special Concessions Rule should be retained with respect to interconnection, private line provisioning and maintenance, and quality of service. The rule is essential if consumers are to reap the benefits of lower costs as a result of liberalization of the ISP.

¹⁴ See Comments of MCI Worldcom at 8. Many other carriers make this point implicitly by recommending reform of the Flexibility Order affiliate safeguard with respect to non-dominant affiliates *only*. See, e.g., Comments of BellSouth at 4-5.

¹⁵ See, e.g., Comments of Sprint at 12; Comments of MCI Worldcom at 10; Comments of AT&T at 15; Comments of TRA at 8.

GSA, the only end user to comment in this proceeding, observes that end users benefit from "[c]onditions which give all carriers equal status" and that "there is no demonstrated advantage at all for end users to discontinuance of the 'No Special Concessions Rule.'" Comments of GSA at 10-11. Sprint notes the Rule's importance "[e]ven on liberalized routes" because exclusive arrangements allow "a U.S. carrier to raise its rivals' costs of providing service and would lead to less competition and higher rates for consumers." Comments of Sprint at 12. Accordingly, the Rule should continue to prohibit all exclusive arrangements, exempting *at most* arrangements concerning the terms and conditions under which traffic is settled where the ISP no longer applies.

SBC's suggestion that the Commission cease applying the Rule entirely where the ISP no longer applies, see Comments of SBC at 19, ignores that discrimination in interconnection terms, private line provisioning, quality of service, and the like can present enormous obstacles to U.S. carriers' ability to provide service in a foreign market. Indeed, the recent emergence of discriminatory interconnection proposals in supposedly liberalized foreign markets underscores the wisdom of retaining this fundamental safeguard against anti-competitive conduct.

Finally, SBC suggests that the Rule only apply to exclusive arrangements with respect to the particular market in which the foreign carrier has market power. See Comments of SBC at 19-20. This argument ignores that a carrier which is dominant in any market segment has the ability to impair access to other portions of that market. Furthermore, any change of Commission policy is premature because so few markets have begun to liberalize, and would set back the development of competition even in liberalizing markets by further empowering incumbents.

VI. THE COMMISSION SHOULD PROHIBIT GEOGRAPHICALLY GROOMED TRAFFIC BETWEEN CARRIERS WITH MARKET POWER.

PrimeTEC believes that geographically groomed traffic presents a risk of anti-competitive effects when the U.S. carrier has dominant market share and the foreign correspondent is dominant in its market. AT&T and MCI Worldcom each offer concrete evidence of ways in which groomed inbound traffic offers a ready means for ILECs to raise rivals' costs (for example, by foisting more burdensome peak-time traffic on other carriers without a corresponding increase in settlement payments), and for dominant foreign carriers to play U.S. carriers off one another to the detriment of U.S. consumers.¹⁶

Grooming arrangements between carriers that are each dominant in their own markets¹⁷ are likely to present serious obstacles to provision of inbound service by competitive U.S. carriers. Furthermore, allowing them would send a harmful signal to regulators in other countries that entities that control an overwhelming share of the local market should be allowed to exploit that position in exclusive arrangements with foreign correspondents. Accordingly, the Commission should treat such an arrangement as a prohibited "special concession" or as an unreasonably discriminatory arrangement.

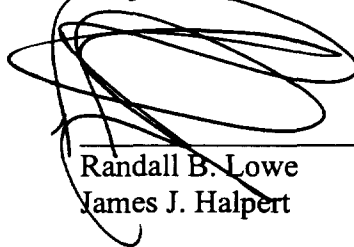
¹⁶ Comments of AT&T at 33-34; Comments of MCI Worldcom at 11.

¹⁷ Indeed, as SBC recognizes, dominance in an overseas local market is a relevant factor meriting special regulation under the No Special Concessions Rule. See Comments of SBC at 20.

VII. CONCLUSION

For the foregoing reasons, PrimeTEC asks the Commission to: (1) cease applying the ISP for arrangements with non-dominant carriers from WTO countries, but continue to apply the first Flexibility Order safeguard to arrangements for which it lifts the ISP; (2) cease applying the ISP for arrangements with dominant carriers on ISR routes only where the correspondent country allows ISR and meets the Commission's benchmark; (3) retain the Flexibility Order safeguard requiring disclosure and non-discriminatory terms and conditions for arrangements affecting 25% or more of the traffic on a route; and (4) limit the application of the second Flexibility Order safeguard to arrangements with dominant affiliates or non-equity joint venture partners; (5) retain the No Special Concessions Rule so that it prohibits *at the very least* exclusive arrangements with respect to interconnection, private line provisioning and maintenance, and quality of service; and (6) prohibit geographically groomed traffic between dominant foreign carriers and incumbent LECs.

Respectfully submitted,



Randall B. Lowe
James J. Halpert

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900
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